



# NEW FAIRTIMES

California Department of Fair Employment & Housing

Third Quarter

2011



2011 ushers in a new civil rights era with a renewed commitment to providing public service, outreach, advocacy and resource.



DFEH Partnerships



## LAW STUDENTS IN DFEH-UC IRVINE AND UC DAVIS SCHOOLS OF LAW CLINICAL PROGRAMS COMPLETE EVALUATING VERIZON CLASS ACTION CLAIMS

Under the supervision of DFEH's Enforcement Division and Special Investigations Unit (SIU), 16 law students in the summer programs of the DFEH-UC Irvine and DFEH-UC Davis Schools of Law admirably completed classifying 966 claims in the Department's \$6,011,190 California Family Right Act (CFRA) class action settlement in *Dept. Fair Empl. & Hous. v. Verizon* (Seales) (Super. Ct. L.A. County, 2010, No. BC444066). The law students conducted independent Verizon claim evaluations to determine, on a case-by-case basis, whether the claimant experienced a CFRA violation and, if so, the type of violation and the appropriate level of damages. In addition to working on the Verizon class action settlement, the law students also gained experience in other SIU class/group action investigations and regularly learned from guest lecturers representing the California Employment Lawyers Association and voluntary bar associations. Several law students also starred in an upcoming new Department video, "DFEH from Intake to Decision." Below are photographs of some of the students in the summer program.

Summer 2011 DFEH- UCI School of Law Civil Rights Clinic. Left to right: DFEH Special investigations Unit Administrator Alexandra Seldin, DFEH retired District Administrator Steve White, DFEH Chief of Enforcement Tim Muscat, Michael Deshong, Jennifer Wong, Jorge Nicolas Anwandter, DFEH Director Phyllis Cheng, Ashley Kim, Hye Seong Lee, Alex Alvarez, and Genny Kristie. Not pictured is Kevin Reyes.



Summer 2011 DFEH- UC Davis School of Law Employment Discrimination Program meet with State & Consumer Services Agency Secretary Anna Caballero. . Left to right: Kyle Wende, Naomi Pontious, Lindsay Gold, Salwa Khader Haddad, Secretary Anna Caballero, Alexandra Wendell (Harvard Law School Intern), Rachel Araullo, Tofer Tuttle, DFEH Chief of Enforcement Tim Muscat. Not pictured are Ryan Norman and Sheila Pham.

**DFEH-CSU BAKERSFIELD CIVIL RIGHTS CLINIC LAUNCHED** - Starting in fall 2011, California State University, Bakersfield, is now the third DFEH partnership to train public policy graduate students to investigate employment discrimination complaints. More partners are anticipated in spring 2012.

**DFEH INTERNSHIP OPPORTUNITIES** - Even if your university or college does not have a partnership with the DFEH, you can apply for an internship independently.



**DFEH PROCEDURAL REGULATIONS ADOPTED** - The DFEH's first-ever procedural regulations were approved by the Office of Administrative Law on September 7, 2011 and filed with the Secretary of State. Effective October 7, 2011, the succinct regulations replace nearly all of the formerly voluminous Department directives adopted over 30 years, making the Department's procedures readily accessible and easy to understand.

The new rules capture existing procedures within the Department for handling complaints related to employment, housing, and public accommodation discrimination and incidents of hate violence. All complaints within the Department's jurisdiction, for example, workplace harassment, discriminatory hiring or firing or refusal to rent on a discriminatory basis, are covered. Public testimony and written comments helped shape the final regulations.

"I am excited that the Department finally has procedural regulations that are clear, user friendly and citable as legal authority," said Director Phyllis Cheng. "These new rules comply with the Administrative Procedures Act and streamline the Department's processes. We appreciate the public's valuable feedback that made these regulations possible."

Developed by Chief Deputy Director Annmarie Billotti, the regulations formalize existing procedural steps for the Department's administrative process, including intake, complaint filing, investigation, conciliation, and prosecution; they also cover the procedures of the Department's new Mediation Division. The rules benefit employees, tenants, employers, businesses and housing providers alike. The regulations can be found in the California Code of Regulations, title 2, sections 10000 through 10066.

**SELECTED LIST OF EMPLOYMENT, HOUSING AND DISABILITY ACCESS BILLS SIGNED INTO LAW BY GOVERNOR EDMUND G. BROWN, JR. in 2011 LEGISLATIVE SESSION**

AB 22 by Assemblymember Tony Mendoza (D-Artesia) – Employment: credit reports.

AB 410 by Assemblymember Sandre Swanson (D-Oakland) – Regulations: adoption: disability access.

AB 592 by Assemblymember Ricardo Lara (D-South Gate) – Employment: leave: interference, restraint, and denial.

AB 887 by Assemblymember Toni G. Atkins (D-San Diego) – Gender.

AB 1088 by Assemblymember Mike Eng (D-Monterey Park) – State agencies: collection of demographic data.

SB 299 by Senator Noreen Evans (D-Santa Rosa) – This bill prohibits employers from refusing to maintain and pay for coverage under group health plans for women who take maternity leave.

SB 337 by Senator Christine Kehoe (D-San Diego) – Tenancy: political signs.

SB 384 by Senator Noreen Evans (D-Santa Rosa) – Civil actions-notice to building owner or tenant for construction accessibility claim.

SB 559 by Senator Alex Padilla (D-Pacoima) – Discrimination: genetic information.

**DFEH-SPONSORED AND CO-SPONSORED WEBINARS**

Government Code section 12950.1 requires all State of California supervisors to attend two hours of sexual harassment prevention training within six months of hire and refresher training every two years. In light of travel restrictions and reduced training budgets, the DFEH, State Personnel Board (SPB) and Department of Personnel Administration (DPA) have partnered to develop "Sexual Harassment Prevention Training" webinar free of charge to all State of California supervisors and employees. This online webinar is an alternative to in-service and out-sourced instructor-led training, and online fee-based learning. All participants are provided with a certificate upon completion of the training.

In addition, the DFEH continues to provide monthly "Legal Update" webinars free of charge to State employees. In the several months, the Department sponsored webinar presentations on the following topics:

- Reasonable Accommodation for Pregnancy
- Workplace Retaliation
- Unlawful Harassment in the Workplace: Understanding Discrimination, Free Speech and "Stray Remarks"
- Mediation: How it Works and Why You Should Try It
- Self-Help for Problems in the Workplace: How to Resolve Workplace Disputes before a Claim of Discrimination Gets Filed

In addition, the DFEH has presented other webinars in conjunction with the Employment Round Tables of Central, Northern and Southern California, as well as the Department of Rehabilitation, Housing Rights Center and other organizations and agencies. See the DFEH Web site's carousel for additional PowerPoint presentations.



## DFEH VICTORIES BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION

### **Dept. Fair Empl. & Hous. v. Acme Electric (Wideman), FEHC Dec. No. 11-08, Cancer Discrimination in Employment**

The DFEH achieved its largest-ever administrative award of \$846,300 against electrical supplier Acme Electric Corporation for firing an employee because he had cancer. Headquartered in Lumberton, North Carolina, Acme Electric is a division of Actuant Corporation, a Wisconsin diversified industrial corporation that operates in more than 30 countries.

"This historic administrative victory underscores the Department's commitment to vindicating the rights of Californians victimized by workplace discrimination," said DFEH Director Phyllis Cheng.

Charles Richard Wideman worked for Acme Electric as western regional sales manager overseeing sales operations in the company's largest territory from February 2004 to March 2008. He developed kidney cancer in 2006 and prostate cancer in 2007. Mr. Wideman's cancers required two surgeries and numerous cancer-related outpatient appointments. The company immediately granted his two requests for time off for surgery and recuperative leave. However, Mr. Wideman requested further accommodation for the travel limitation his cancers caused from June 2006 through April 2007. Acme Electric refused to grant or even acknowledge these accommodation requests. Instead, in December 2007, Mr. Wideman's supervisor gave him an unfavorable performance evaluation, criticizing him for insufficient travel. On February 28, 2008, ignoring Mr. Wideman's need for accommodation the preceding year and failing to take into account his dramatically improved job performance, Acme Electric fired Mr. Wideman, relying on the insufficient travel pretext.

"California's Fair Employment and Housing Act ( FEHA) provides that persons with disabilities, such as cancer, must be reasonably accommodated, so that they can continue to work productively," added Director Cheng.

After a three-day hearing, the State's Fair Employment and Housing Commission ( FEHC) found Acme Electric violated the FEHA by failing to accommodate Mr. Wideman's known travel limitation due to his cancers, failing to engage in a good faith interactive process, discriminating against Mr. Wideman because of his disability, and failing to take all reasonable steps necessary to prevent discrimination from occurring. To compensate Mr. Wideman for his losses, the Commission awarded him \$748,571 for lost wages, \$22,729 for out-of-pocket expenses and \$50,000 for the emotional distress he suffered. In addition, the Commission ordered Acme to pay \$25,000 to the State's General Fund as an administrative fine. Acme must further comply with posting, policy changes, and training requirements ordered by the Commission.

### **Dept. Fair Empl. & Hous. v. Air Canada (Messih-Zemaitis), FEHC Dec. No. 11-7-P, Disability Discrimination in Employment**

Air Canada terminated Caroline Zemaitis' employment as a customer service agent because of her disability, failing to provide reasonable accommodations to her that would have allowed her to do her job, ignoring Ms. Zemaitis' attempts to communicate with the company to return her to work, and ignoring its own accommodations and leave policies.

This is a precedential disability employment case. By a majority decision, the Commission found that Air Canada had violated Government Code section 12940, subdivisions (a), ( k), (m) and (n). In addition to affirmative relief, the Commission ordered Air Canada to pay \$102,737.60 and interest in back pay, \$19,720 and interest in lost benefits, reinstate Ms. Zemaitis to her former position or to a comparable position, front pay accruing from February 16, 2010 until she is reinstated, refuses an offer of reinstatement or achieves equivalent earnings (approximately currently \$54,784 and accruing), \$125,000 plus interest for emotional distress damages, \$25,000 plus interest in an administrative fine to the State, and affirmative relief including, developing and implementing a reasonable accommodations policy, training management on disability discrimination, post a notice that Air Canada had been found liable for disability discrimination and notices informing employees of their rights in all business locations in California. Monetary damages awarded against Air Canada total more than \$327,000 (and accruing).

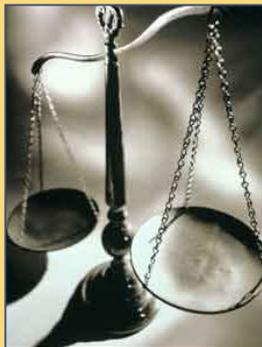
### **Other Notable Victories before the FEHC**

**Dept. Fair Empl. & Hous. v. United Parcel Service (UPS) (Mason), FEHC Dec. No. 11-05, Disability Discrimination in Employment.** UPS fired Ms. Mason because of its knowledge of her knee restrictions, in spite of the fact that her disability was not in any way preventing her from doing the essential functions of her job. In addition to affirmative relief, the Commission awarded back pay in the amount of \$31,170, reinstatement (valued at \$30,000), ongoing wage loss from May 13, 2010, emotional distress of \$25,000, and an administrative fine of \$10,000, for a total award of \$96,170.

**Dept. Fair Empl. & Hous. v. Hernandez (Arnold), FEHC Dec. No. 11-09, Race Discrimination in Housing.** The landlord refused to rent to "White people," because "White people have too many rights." The Commission found the landlord violated Government Code section 12955, subdivisions (a), ( c), and (k) of the FEHA, and awarded \$22,500 in emotional distress and \$10,000 in civil penalties, and affirmative relief., for a total of \$32,500.



## DFEH Settlements



**FOR IMMEDIATE  
RELEASE**

### DFEH SETTLEMENTS

#### Bath & Body Works Pays Employee \$70,000 to Settle Sexual Orientation Harassment Case

**Dept. Fair Empl. & Hous. v. Limited Brands Store Operations**, DFEH Case Nos. E-200809-G-0124-00, E-200809-G-0124-01, and E-200809-G-0124-02

The DFEH recently announced the \$70,000 settlement of a workplace sexual orientation harassment case against Limited Brands Store Operations, Inc., and Bath & Body Works, LLC. A manager of a Bath & Body Works was accused of harassing her co-manager because of his sexual orientation.

The DFEH filed an accusation with the Fair Employment and Housing Commission after investigating a complaint from the co-manager, who began working at Bath & Body Works in August 2007. The complainant claimed that from his first day on the job, his female supervisor referred to him multiple times a day using slurs based on his sexual orientation, drew pictures of male genitals, which she hung in the store's back room, told his co-workers that he liked kissing boys, and falsely claimed that his attitude was affecting the work environment. The Department's accusation further alleged that, although another store manager witnessed the harassment and the employee complained to the district manager, Bath & Body Works failed to stop the harassment, ultimately forcing the complainant to quit.

"The Department of Fair Employment and Housing takes great pride in leading the enforcement of California's civil rights laws," said DFEH Director Phyllis Cheng. "This compelling case should remind employers that they must have policies in place to prohibit discrimination and harassment against employees—and employ managers who can enforce those policies."

As part of the \$70,000 settlement, Bath & Body Works, LLC agreed to provide discrimination and harassment prevention training to its supervisors and managers, provide training to all new hires within 60 business days of hire, display posters informing employees of their right to report discrimination to the DFEH, and retain copies of all complaints of discrimination and harassment made by employees alleging a violation of the Fair Employment and Housing Act. Bath & Body Works did not admit to any liability in the agreement to settle.

#### Other Notable Settlements

*Dept. Fair Empl. & Hous. v. Hertz (MacLean)*, DFEH Case No. E-200910-D-0437-00- pe, perceived disability in employment, \$85,000 and affirmative relief.

*Dept. Fair Empl. & Hous. v. Perfect Dental (Zhou & Weng)*, DFEH Case Nos. E200910 -G-0497-00- rsv/01- rsv; E200910 -G-0572-00- rsv/01- rsv, sexual harassment in employment, \$80,000 and affirmative relief.

*Dept. Fair Empl. & Hous. v. Fairfield- Suisun Unified School District (Horsma)*, DFEH Case No. E-200910-M-0874-00- sev, pregnancy discrimination in employment, \$32,000 and affirmative relief.

*Dept. Fair Empl. & Hous. v. Cardenas Market, Inc. (Espino)*, DFEH E-201011-K-0130-00-se, sexual harassment in employment, \$25,000 and affirmative relief.

*Dept. Fair Empl. & Hous. v. OF Lending Group, et al. (Lenz)*, DFEH Case.Nos. E-200910-M-0670-00- rsev and E-200910-M-067-01, sexual harassment in employment, \$25,000 and affirmative relief.

*Dept. Fair Empl. & Hous. v. Del Rey Club Apartments, et al. (Housing Rights Center)*, DFEH Case Nos. H-200809-P-0420-00-h, H-200809-P-0420-01, H-200809-P-0420-02, familial status discrimination in housing, \$20,000 and affirmative relief.

*Dept. Fair Empl. & Hous. v. Costless Outlet Store, Inc., et al. (Rodriguez)*, Sonoma County Superior Court No. SCV-246928, sexual harassment in employment, \$18,000 and affirmative relief.

*Dept. Fair Empl. & Hous. v. Progress Foundation (McDowell)*, San Francisco County Superior Court No. CGC-11-510958, sex and pregnancy discrimination, \$15,000 and affirmative relief.

#### DFEH IN THE NEWS

The Daily Journal featured in its Verdicts and Settlement section the DFEH's \$846,300 victory in *Dept. of Fair Empl. & Hous. v. Acme Electric* and \$70,000 settlement in *Dept. of Fair Empl. & Hous. v. Bath & Body Works* on September 23, 2011.

The San Francisco Chronicle reported that the Fair Employment and Housing Commission ordered an electrical supply company to pay a record \$846,000 in a workplace disability discrimination case litigated by the DFEH on September 13, 2011.



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## Links

DFEH Web site: [www.dfeh.ca.gov](http://www.dfeh.ca.gov)  
FEHC Web site: [www.fehc.ca.gov](http://www.fehc.ca.gov)  
SCSA Web site: [www.scsa.ca.gov](http://www.scsa.ca.gov)

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NEW FAIRTIMES is a quarterly electronic newsletter of the DFEH. To change or remove your e-mail address from the NEW FAIRTIMES mailing list, or for more information, e-mail Annmarie Billotti at [annmarie.billotti@dfeh.ca.gov](mailto:annmarie.billotti@dfeh.ca.gov)

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## DFEH TO USE CLOUD-BASED CASE MANAGEMENT SYSTEM

The DFEH has contracted with LogicBit Corporation to launch a web-based Case Management System (CMS). Planned to be launched by mid-2012, a customized version of LogicBit's HoudiniESQ system will replace the Department's current legal software system and will be hosted in the Cloud. Save for confidential and privilege information, and internal fire walls, the new CMS will be designed to be transparent and accessible to the public.

The State of California's decision to choose a SaaS/web-based product for DFEH comes right on the heels of signing a Cloud computing deal with Microsoft to provide web-based email services to the State's employees. The State of California's Department of General Services began its search for a on-line Legal Practice Management product in early 2010. The state is consolidating its IT operations and was looking for ways to use Cloud Computing to cut cost, improve operational efficiencies, reduce the use of paper, and provide better service to California residents.

## DFEH OUTREACH ACTIVITIES

In the third quarter of 2011, DFEH Director Phyllis Cheng outreached to the following groups: California Employment Lawyers Association; Bay Area Civil Rights Advocates; Employment Round Tables of Central, Northern and Southern California; Screen Actors Guild; California Commission on Disability Access; U.S. Equal Employment Opportunity Commission; College of the Canyons; DFEH-UC Irvine and UC Davis Schools of Law clinical programs; State Bar of California Fair Housing and Public Accommodations Subsection; and Department of Rehabilitation.

DFEH staff outreached or made presentations to the following group: FEHC; U.S. Department of Labor; International Public Management Association; Office of the State Architect; CSU Bakersfield; Northern California Employment Round Table; Central California Employment Round Table; Consul General of Mexico; Employment Round Table of Southern California; and Northern California Employment Round Table.

## Opportunity

If you already practice employment law under the FEHA, why not also expand your practice to housing law under the same Act? The State Bar Real Property Law Section has launched a Fair Housing and Public Accommodations Subsection to train attorneys on the FEHA housing practice and the Unruh Civil Rights Act reasonable accommodations practice. If you are interested, please e-mail Phyllis Cheng at [phyllis.cheng@dfeh.ca.gov](mailto:phyllis.cheng@dfeh.ca.gov) to receive an invitation to join the Fair Housing and Public Accommodations Subsection's free E-Circle.